

sioners appointed by and for the city, up to the time of filing their bill.

On the 1st of June, 1815, another bill was filed by Cumberland Dugan and the widow and heirs of Thomas McElderry, deceased, against The Mayor and City Council of Baltimore. In this bill the plaintiffs, after stating the circumstances in relation to the making of the wharves in Market space, as set forth in the first bill, allege, that the defendants had been prohibited by the Act of 1813, ch. 118, from collecting wharfage for the use of any public wharf; and yet had imposed wharfage for the use of the wharves made by these plaintiffs, and had collected a large amount to the exclusion of these plaintiffs, who alone had the right to the wharfage for the use of those wharves. Wherefore they prayed for an injunction, and for general relief. This bill was sworn to by only two of the plaintiffs.

KILTY, C., 12th June, 1815.—The bill for an injunction in this case has been for some time under consideration. On account of the nature of the dispute, and the caution that is necessary in interfering with the legislative acts of an incorporated town. But where such a corporate body frames its acts in opposition to a law of the State on the subject-matter, the persons aggrieved are entitled to the aid of this Court, and its restraining power cannot with justice be refused.

The Chancellor is of opinion, that the part of the ordinance of March 25th, 1815, charging rates on the articles, therein enumerated, landed on any public wharf, is a palpable evasion of the Act of Assembly, 1813, ch. 118; attempting, by a seeming adherence to the letter, to contravene the intention of that law, as plainly appears by the proviso in that section of the ordinance, as well as from a consideration of the manner in which wharves are used by landing goods for the purpose of passing them over, or passing over goods, which must be previously landed. In supposing The
366 * Mayor and City Council to have the right to make such an ordinance, it could not lawfully be evaded by passing over goods on planks, skids, or even in drays or carts, so as not to touch or be landed on the wharves.

The ordinance of March 21st, 1814, does not appear to be contrary to the prohibition contained in the Act of Assembly of 1813, ch. 118, inasmuch as the wharfage on vessels lying at the public wharves is not mentioned in the latter, and the rates or duties are different in their kind.

On the first part of the bill respecting the rights of the parties no further opinion is expressed than as to the ostensible right of the complainants, which is sufficient to sustain the application for an injunction.